

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-63

PROCEDURAL HISTORY

On April 26, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Kent School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 26, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 27, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On May 12 and 19, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on May 22, 2023.

On May 31, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 1, 2023.

On June 12 and 14, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on June 15, 2023. OSPI forwarded the information to the Parent on June 16, 2023.

On June 20, 2023, OSPI received additional information from the Parent. That same day, OSPI provided a copy of this information to the District.

OSPI considered the information provided by the Parent and the District as part of its investigation.

ISSUE

1. Did the District follow proper procedures for determining appropriate compensatory education to address those individualized education program (IEP) services the IEP team determined were not provided between September 8, 2022 and March 28, 2023?

LEGAL STANDARDS

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(i).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

"There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

FINDINGS OF FACT

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of other health impairment, was in the fifth grade, attended a District elementary school, and the Student's January 2022 IEP was in effect.

The January 2022 IEP included annual goals in written expression, math problem solving, basic reading skills, and reading comprehension. The Student's January 2022 IEP provided the Student with the following non-concurrent specially designed instruction (SDI) in a *special education setting*:

- Reading Comprehension: 120 minutes a week (to be provided by a paraeducator)
- Basic Reading Skills: 40 minutes a week (to be provided by a paraeducator)
- Written Expression: 120 minutes a week (to be provided by a paraeducator)

- Math Problem Solving: 120 minutes a week (to be provided by a paraeducator)

The Student's January 2022 IEP provided the Student with the following concurrent SDI in a *special education setting*:

- Basic Reading Skills: 120 minutes a week (to be provided by a paraeducator)

The January 2022 IEP stated the foregoing services would be provided "in a pull out special education setting."

2. According to the District's response, there were several staffing disruptions during the 2022–2023 school year that impacted the provision of SDI to the Student:
 - From September 8 through October 24, 2022, the program paraeducator "provided 1:1 support to a [different] student on the [elementary school's special education] caseload, which caused missed services to other students on the IEP caseload"¹;
 - On November 4, 2022, the program paraeducator resigned and a replacement program paraeducator was not hired until November 28, 2022;
 - "On December 7, 2022, the Student's special education teacher resigned from her position at [the] elementary [school² – between] the special education teacher's departure and January 3, 2023, a paraeducator worked with Student";
 - "On January 3, 2023, [a] guest teacher who [holds] an emergency certificate [but does not] hold a special education endorsement, began teaching in Student's classroom", and the guest teacher continued in this role "until the end of March 2023"; and,
 - A "general education teacher [began serving as] a long-term substitute...in Student's classroom at the beginning of April 2023" and continued to serve in that position through the end of the 2022–2023 school year.
3. According to the District, from the beginning of the school year through March 3, 2023, the Student received academic instruction—Monday, Tuesday, Thursday, and Friday—during the following time periods: 10:30–10:50 am; 11:50 am–12:20 pm; 1:15–1:45 pm; and 3–3:30 pm (schedule 1).

According to the District, "SDI in written expression, basic reading, reading comprehension, and math problem solving was provided flexibly within these time frames."

4. According to the Parent:

At the start of the year the special education teacher introduced a new bin system for the...students, which continued till mid April 2023. They would go into the room and grab a bin that had their work in it and work independently. There was no group or individual instruction. [For example], there were several days Student had a session 11:50–12:20 and the [class]room closed at 12 for lunch and she was sent back to the classroom.

¹ According to the District, "on October 24, 2022, [a] paraeducator was hired and took over the 1:1 support [needs] and the...program paraeducator was then able to serve the remaining students."

² According to the Parent, prior to her resignation on December 7, 2022, the special education teacher also had to frequently provide 1:1 support to various students, resulting in "room closure[s]" and "room clearing events" wherein most students with IEPs did not get the services they were scheduled to receive at that time.

5. As best OSPI can read the Student attendance data included in the District's response, the Student was absent for approximately seven school days during the 2022–2023 school year.
6. The District's response included approximately ten pages of Student work samples, including, in part, journal entries, math worksheets, and writing worksheets.
7. According to progress reporting data, as of October 17, 2022, the Student had made sufficient progress on the January 2022 IEP goals in written expression, math problem solving, basic reading skills, and reading comprehension.
8. According to the Parent, on October 17, 2022, a "conference [took place to discuss] significant minutes [of instruction that were supposed to have been provided to the Student but were] missed."
9. The District was on break November 24–25, 2022.
10. According to an email, on or about December 17, 2022, the Parent had a conversation with the school psychologist regarding "concerns about the history of [the program the Student was in] at [the elementary school]."
11. The District was on break December 19 2022 through January 2, 2023.
12. On January 10, 2023, the guest teacher emailed parents of students in the class, including the Parent, stating, in part:

Last week, I had the privilege to meet many of your children during their scheduled times in my class. Each student is completing packets with assistance from myself, the morning guest teacher, and a paraeducator. We are currently collaborating with the special education program specialist to make the best use of the scheduled time and hope to make improvement with each student's development.
13. On February 21, 2023, the Parent emailed the guest teacher, requesting an IEP meeting to discuss "missed [IEP] minutes."
14. On February 25, 2023, the principal emailed the Parent, stating, in part, "We had two of our [program] staff out all this week which caused [program] to be closed at times and we had challenges to serve our students."
15. On February 26, 2023, the Parent emailed the guest teacher, stating, in part, "This last week a lot of talk has started with the District about missed minutes [and] compensatory services."
16. According to emails, in mid-to-late March 2023, in response to concerns from the Parent, the two assistant directors were collaborating on how to best respond to missed IEP minutes experienced by students with IEPs.

17. According to the District, beginning March 6, 2023, the Student received instruction four days of the week—Monday, Tuesday, Thursday, and Friday—in accordance with the following schedule:

- 11:30 am–12 pm: Written Expression;
- 10:30–11am: Basic Reading and Reading Comprehension; and,
- 2:30–3 pm: Math Problem Solving.

18. On March 9, 2023, the Student’s IEP team developed a new IEP for the Student. The March 2023 IEP included annual goals in math problem solving (fractions), math problem solving (decimals), reading fluency (irregular vowels), reading fluency (oral reading accuracy), reading comprehension, written expression (use of text evidence), and written expression (speech-to-text).

The Student’s March 2023 IEP provided the Student with the following non-concurrent SDI in a *special education setting* from March 13 through June 30, 2023:

- Basic Reading: 120 minutes a week (to be provided by a paraeducator)
- Written Expression: 120 minutes a week (to be provided by a paraeducator)
- Math Problem Solving: 120 minutes a week (to be provided by a paraeducator)

The Student’s March 2023 IEP provided the Student with the following concurrent SDI in a *special education setting* from March 13 through June 30, 2023:

- Reading Comprehension: 60 minutes a week (to be provided by a paraeducator)
- Reading Fluency: 60 minutes a week (to be provided by a paraeducator)

The March 2023 IEP read, in part, “Description of Services: Elementary. [Student] will attend pull-out groups for small group SDI in reading, writing, and math four times weekly.”

19. On March 27, 2023, the District wrote the Parent a letter, stating, in part: the guest teacher—who acted as the Student’s special education teacher from roughly January 3 through the end of March 2023—had a limited substitute teaching certificate.

20. On March 30, 2023, the District wrote a letter to certain “families,” including that of the Student. It read, in part:

As you know, the teacher resigned her position as the integrated program teacher at the elementary school in December. As per district practice, we have had this position posted for hire since that time. Unfortunately we have not had viable candidates to hire resulting in the need for guest teachers to fill the position, in addition, due to our caseload of students who require individualized instruction, we require an additional full-time certificated teacher, which has also been posted and remains unfilled.

I wanted to provide an update for our...program. Unfortunately the current full-time guest teacher has moved out of the area. Beginning Monday, April 3, we will have a new IEP guest teacher, working with our students. She is excited to join us and hopes to stay with us until the end of the year. The new guest teacher will send out communication to families to introduce herself and make connections with you soon.

Fortunately, a program specialist is willing to continue supporting the elementary school with IEP meetings and working closely with our building instructional coach, and new guest teachers to support this transition and ensure special education services continue.

21. The District was on break April 10–14, 2023.

22. On April 18, 2023, the District wrote the Parent a letter. It read, in part:

This letter is intended to outline compensatory services being offered to student as they did not receive all minutes of special education services as outlined in their IEP between the dates of September 8, 2022 and March 8, 2023 during the 2022-2023 school year while the special education teacher position at the school was unfilled and the district was unable to provide substitute. The district is offering student a total of 36 instructional hours in the areas of SDI listed in their IEP. These services can be accessed over the summer of 2023.

...

The amount of compensatory service time is calculated to reasonably provide the educational benefits that likely would have accrued should there have been no missed instruction.

...

Services for summer 2023 will be offered Monday through Thursday, from 8:30 AM to 12:00 PM from July 5 to July 25th [and they] will be provided at [an] elementary [school].

According to the Parent, the Student should have been offered “202 hours of [compensatory] instruction [but] the District [is] saying 36 [hours of compensatory education] is adequate.”³

According to the District:

The District’s offer of 36 hours was intended to be a liberal compensatory education offer. It determined there were potential implementation issues on a total of approximately 66 school days, or 13 weeks, between September 8, 2022 and March 28, 2023, where Student’s SDI was not delivered in conformity with her IEP due to staffing issues.⁴

Rather than attempt to determine the exact scope of the impact on each day, the District treated each day as a complete failure to provide SDI for the purposes of its compensatory offer.

It then determined a total weekly average of SDI to which students on [teacher’s] caseload were entitled. This average was 443 weekly minutes, which was 43 weekly minutes more than the total SDI to which Student was entitled. Multiplying these together, it totaled 5,759 minutes or 96 hours.

³ In a May 18, 2023 email to the assistant director, the Parent stated the Student required 300 hours of compensatory education.

⁴ The District’s response included a calendar that includes various notes. Said calendar includes writing, showing the District determined a “paraeducator [role was] unfilled” on 31 days, a “certificated [role was] unfilled” on 12 days, and there was a “record of widespread missed services” for 26 days. In relation to the calendar, OSPI notes: the foregoing calculations would total 69 days, not 66 days; most of the November 2022 school days appear to have been highlighted; most all the school days in January and February of 2023 are circled; and at least four school days in March 2023 appear to have been highlighted.

Recognizing that 1:1 tutoring is more intensive than classroom instruction, the District reduced this number to one-third, or 32 hours. It then rounded the number up to 36 to reflect three full weeks of services.

...

The District did not allocate the offered hours to specific areas of service, but rather left this decision to the family in order to provide them with the autonomy to spend the hours where they determined there was most need.

23. On April 21, 2023, the assistant director emailed the Parent, stating, in part:

I am very sorry the District has failed in filling our special education teacher positions in the...program... it has had such an impact on Student...[The compensatory education offer] was a blanket offer made to the entire caseload impacted by services missed, with the option provided to discuss individual circumstances requiring individual consideration. The intention is that this offer is likely an overestimate of what each student is owed, however there may be indications that more is needed and I'm happy to discuss further if you believe your child's unique situation warrants additional time...The services currently offered are optional and the District is willing to consider any reasonable and educationally relevant alternatives you would like to propose to compensate for services missed this year. The services offered currently relate to the time period of 09/08/22 to 03/28/23 because the school is currently providing all services in IEPs and no longer accruing compensatory ed. If, in the future, additional services are missed, a new and separate offer of compensatory education services would be indicated.

24. The Parent and the assistant director met on May 1, 2023, to discuss the issue of compensatory education. An email authored by the assistant director, and related to this meeting, read, in part:

As we discussed Monday, the district is amenable to providing the compensatory education services indicated via contract with [an external] Learning [provider], as you indicated was your preference.

...

On Monday, I also provided a calendar indicating the 66 days I have included as days where I have assumed no special education services were provided. To be clear, some service was provided on each of these dates, but because the extent to which services were missed cannot be confirmed by available records, we have applied the most generous interpretation possible in assuming all services were missed.

...

Based on current available information, the District is willing to provide 36 hours of compensatory education services, in a 1:1 setting, via [an external] Learning [provider] per your request. This is based on Student having missed up to 87 hours of specially designed instruction over this time period and the district's position that 1/3 of hours missed (i.e. 29 hours) is sufficient to compensate [Student] for lost services and to help her reach the progress level she would have reached had she not missed services, as services would be provided in a 1:1 format rather than the small group format typical of [Student's] program in the IP program.

According to the Parent:

The assistant director stated Student had made sufficient progress on all of her goals. I explained to the assistant director we had never received a progress report the entire year,

we had no [program] representative at our conferences to go over progress in IEP. He showed me the latest progress report he had on Student which was on 10/17/2022 that said she had made sufficient progress, the comments for that time were very short...Her latest progress report was dated 5/04/2023 – after my meeting with the district. Her latest progress report says she is insufficient progress on 3 of her goals.

25. According to progress reporting data, as of May 5, 2023, the Student had made the following progress on the January 2022 IEP goals:

- Written expression: mastered;
- Math problem solving: insufficient progress;
- Basic reading skills: insufficient progress; and,
- Reading comprehension: insufficient progress.

(When OSPI's investigator asked why the May 2023 progress reporting related to the January 2022 IEP goals, and not the March 2023 IEP goals, the District explained, in part, "As indicated in the narrative/comments section of May 5, 2023 progress note, data gathered for that note was gathered from information obtained in March 2023 prior to the new IEP.")

26. The Parent had a meeting with the assistant director and the interim executive director of inclusive education regarding the issue of compensatory education on May 11, 2023.

27. On May 12, 2023, the assistant director emailed the Parent, stating, in part:

We have had an opportunity to review the information you shared, as well as [Student's] history of progress and instruction since March of 2020, which you've cited as the starting point of concerns related to Student's special education services. In consideration of the services missed in the current school year, concerns regarding quality of services provided across the last three school years, and the IEP team's failure to offer a discussion regarding any necessary Recovery Services necessary to mitigate impacts of learning conditions during the COVID-19 pandemic during which instruction was provided remotely, the district proposes 150 hours of one on one tutoring services via direct contract with, or reimbursement for, any expenses you incur from [private tutoring company]. Given the level of commitment indicated with this quantity of hours, this offer is contingent upon your willingness to withdraw your complaint with OSPI.

28. During this investigation, OSPI's investigator asked the District whether an individual with a special education certificate designed and supervised any specialized instruction that was provided by either the guest teacher (who served from January 3 through the end of March 2023) and the substitute teacher (who served from April 2023 through the end of the school year), as neither of the foregoing individuals possessed a special education certificate. In response, the District stated:

[The] Inclusive Education Program Specialist (program specialist) and certificated special education teacher supported the guest teacher and the substitute teacher.

The program specialist made scheduling adjustments to ensure all services on the caseload were met, trained the guest teacher on implementation of District-adopted supplemental curricula to provide specially designed instruction, ensured data was collected to inform progress reporting, and trained substitute staff on data collection on IEP goals.

The program specialist consulted with the substitute teacher on SDI implementation, however the substitute teacher has previous experience and knowledge in direct instruction approaches and required less support than the guest teacher.

The program specialist met with staff and students multiple times per week in person and via video conference, 1-4 hours each week.

29. The District's last day of school was June 23, 2023.

CONCLUSIONS

Issue 1: IEP Implementation and Compensatory Education – The Parent alleged the District did not follow proper procedures for determining compensatory education due the Student for IEP implementation failures during the 2022–2023 school year.

When a district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

General Conclusions

First, in multiple communications, the District acknowledged the impossibility of precisely determining the amount of SDI provided to the Student. For example, in early May 2023, the assistant director authored an email that read, in part, "Because the extent to which services were missed cannot be confirmed by available records, we have applied the most generous interpretation possible in assuming all services were missed" on certain days, and in explaining the assistant director's determination that SDI was not provided on approximately 66 days, the District explained, "Rather than attempt to determine the exact scope of the impact on each day, the District treated each day as a complete failure to provide SDI for the purposes of its compensatory offer." As discussed throughout these conclusions, the documentation supports the District's position that it is impossible to precisely determine the exact amount of specially designed instruction provided to the Student.

Second, the two different schedules the Student had—schedule 1 and schedule 2—would have permitted the Student to access the SDI in her respective IEPs. For example, the January 2022 IEP provided the Student with a total of approximately 400 minutes of SDI each week, and schedule 1 provided the Student with approximately 440 minutes of instruction time each week. The March 2023 IEP provided the Student with a total of approximately 360 minutes of instruction each week, and schedule 2 provided the Student with approximately 360 minutes of instruction each week.

Third, throughout the school year, the Parent raised concerns with District staff regarding the amount of SDI the Student received. In spring 2023, the assistant director attempted to calculate the SDI the Student should have received but did not. This calculation was represented in a calendar. On days wherein there were staffing challenges, the assistant director assumed—for the purposes of calculating compensatory education—that no SDI had been provided on those days.

The calendar included writing, showing the District determined a “paraeducator [role was] unfilled” on 31 days, a “certificated [role was] unfilled” on 12 days, and there was a “record of widespread missed services” for 26 days.”

Fourth, some portions of the instruction provided to the Student from January 3 through the end of the school year represented SDI, but the entirety of the instruction provided during that time period cannot be characterized as SDI. For example, specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction, to address the unique needs of the student that result from the student’s disability, and to ensure access of the student to the general curriculum. And special education and related services must be provided by appropriately qualified staff. Other staff, including general education teachers and paraeducators, may assist in the provision of special education, provided that the instruction is designed and supervised by special education certificated staff.

Here, neither the guest teacher nor the substitute teacher possessed a special education certificate. And there is limited evidence showing an individual with a special education certificate was actively involved in designing and supervising the specially designed instruction that was to be provided to the Student by the guest teacher, and in turn, the substitute teacher. For example, the evidence showing the foregoing requirement was met consists principally of three statements: in a January 10, 2023 email, the guest teacher stated, in part, “We are currently collaborating with the special education program specialist”; in a March 30, 2023 letter to the Parent, the District wrote, in part, “A program specialist is willing to continue supporting the elementary school”; and in a supplemental submission to OSPI, the District asserted the program specialist “supported the guest teacher and substitute teacher.”

In contrast, several pieces of evidence suggest it would not be appropriate to characterize all of the instruction the Student received during the foregoing period as SDI. For example:

- The District acknowledged IEP implementation errors through March 28, 2023;
- The Parent asserted, based on her time volunteering in the classroom near the start of the 2022–2023 school year, that students would retrieve their work from “bins”, work independently, and that the students were not provided with either “group or individual instruction”;
- On April 21, 2023, the assistant director emailed the Parent, acknowledging that the absence of a teacher with a special education certificate had “an impact on [the] Student”; and,
- The May 2023 progress reporting related to the January 2022 IEP, not the March 2023 IEP. Furthermore, the May 2023 progress reporting stated the Student made insufficient progress on the math problem solving, basic reading skills, and reading comprehension goals.

For the foregoing reasons, OSPI concludes it is reasonable to treat approximately half of the instruction received between January 3, 2023 and the end of the school year as representing SDI. For analytical purposes, though, OSPI will accept the assistant director’s determination regarding certain days during which no SDI was provided to the Student. And notably, the assistant director identified numerous days in January and February 2023, as those during which the Student did not receive SDI.)

The foregoing general conclusions help explain OSPI’s approximate calculation of SDI provided to the Student during the 2022–2023 school year, below.

Approximate Calculation of SDI Provided to the Student

OSPI's approximate calculation of the amount of SDI provided to the Student is as follows:

- September 8 through October 24, 2022 represents approximately 6.5 weeks of school.
 - When analyzing this period, the assistant director identified approximately 2.5 weeks of school wherein the Student did not receive appropriate SDI. Thus, 4 weeks of instruction remained during the foregoing period.
 - From September 8 through October 24, 2022, the program paraeducator was unable to assist the Student. This caused a disruption to the provision of SDI to the Student as the Student's special education program was not staffed in a manner that would have permitted her to receive the required SDI. Accordingly, OSPI finds that approximately half of this time—or **2 weeks of instruction**—can be treated as time during which the Student was provided with appropriate SDI.
- October 25 through November 3, 2022 represents approximately 2 weeks of school.
 - When analyzing this period, the assistant director identified approximately 2 days of school wherein the Student did not receive appropriate SDI.
 - That means the Student received approximately **1.5 weeks of SDI** during this period.
- November 4, 2022 through February 24, 2023 represents approximately 13.5 weeks of school.
 - When analyzing this period, the assistant director identified approximately 9 weeks of school wherein the Student did not receive appropriate SDI. Thus, 4.5 weeks of instruction remained during the foregoing period, with about 2.5 of those weeks taking place prior to January 3, 2023, and approximately 2 of those weeks taking place after January 3, 2023.
 - As discussed in the general conclusions above, OSPI will consider half of the instruction time the Student received after January 3, 2023, as representing the amount of SDI provided to the Student. Therefore, from January 2 through February 24, 2023, OSPI finds the Student was provided with approximately 1 week of SDI.
 - From November 4, 2022 through February 24, 2023, then, OSPI finds the Student received approximately **3.5 weeks of SDI**.
- February 27 through June 23, 2023 represents approximately 16 weeks of school.
 - When analyzing this period, the assistant director identified approximately 1 week of school wherein the Student did not receive appropriate SDI. Thus, 15 weeks of instruction remained during the foregoing period.
 - As discussed in the general conclusions above, OSPI will consider half of the instruction time the Student received after January 3, 2023, as representing the amount of SDI provided to the Student. Therefore, from February 27 through June 23, 2023, OSPI finds the Student was provided with approximately **7.5 weeks of SDI**.

In sum, September 8, 2022 through June 23, 2023 represented approximately 38 school weeks. And during this time, the Student received approximately 14.5 weeks of SDI, for **a deficit of approximately 23.5 weeks of SDI**.

The Student was supposed to receive 360 minutes of SDI each week. So, in total, **the Student missed approximately 141 hours of SDI**, and some compensatory education is warranted.

A state educational agency is authorized to order compensatory education through the special education community complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims

to place the student in the same position he or she would have been, but for the district's violations of the IDEA.

There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed.

Here, it is notable the May 2023 progress reporting showed the Student made insufficient progress on three of the four goals in the January 2022 IEP. Accordingly, a reasonable compensatory education award would be 71 hours. Therefore, OSPI finds the District's offer of 36 hours to be insufficient, and representative of a violation of the IDEA. The District will be required to provide the Student with approximately half of the total hours missed as compensatory education – 71 hours.

CORRECTIVE ACTIONS

By or before **July 7, 2023, September 13, 2023, and November 22, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **July 7, 2023**, the District and Parent will develop a schedule for 71 hours of compensatory education, divided as the IEP team deems most appropriate, amongst math problem solving, written expression, basic reading, reading comprehension, and reading fluency.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **July 7, 2023**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **November 22, 2023**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **September 13, 2023** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

By or before **November 22, 2023**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **November 22, 2023**.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 23rd day of June, 2023

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)